



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV - 7 2017

Ms. Judy Brown

Nashua, NH 03062

RE: MUR 6857
Marilinda Garcia for Congress, *et al.*

Dear Ms. Brown:

This is in reference to the complaint you filed with the Federal Election Commission on July 28, 2014, concerning alleged contributions by New Hampshire Motor Speedway, Inc. ("NHMS"), Speedway Motorsports, Inc. ("SMI"), Jerry Gappens and Lucy Gappens to Marilinda Garcia for Congress ("Committee") on June 28, 2014. On April 19, 2017, the Commission found that there was reason to believe Jerry Gappens violated 52 U.S.C. § 30118(a), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"). Also on that date, the Commission found that there is no reason to believe that SMI violated 52 U.S.C. § 30118(a), and that there is no reason to believe that Lucy Gappens violated the Act. Further on that date, there was an insufficient number of votes for the Commission to find reason to believe that NHMS violated 52 U.S.C. § 30118(a), and there was an insufficient number of votes for the Commission to find reason to believe that the Committee violated 52 U.S.C. §§ 30118(a) and 30104(b). On October 30, 2017, a conciliation agreement signed by Jerry Gappens was accepted by the Commission. Accordingly, the Commission closed the file in this matter on October 30, 2017.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the conciliation agreement with Jerry Gappens is enclosed for your information. A copy of the Factual and Legal Analysis providing the basis of the findings as to Jerry Gappens, Lucy Gappens and SMI is also enclosed.

A Statement of Reasons providing the basis for the Commission's decision concerning NHMS and the Committee will follow. The Act allows a complainant to seek judicial review of the Commission's dismissal of actions. *See* 52 U.S.C. § 30109(a)(8).

Letter to Judy Brown
MUR 6857
Page 2

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Delbert K. Rigsby

Delbert K. Rigsby
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the matter of

Jerry Gappens

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MUR 6857

CONCILIATION AGREEMENT

This matter was initiated by signed, sworn and notarized complaints by Judy Brown and Lawson Brouse. The Federal Election Commission (the "Commission") found reason to believe that Jerry Gappens ("Respondent") violated 52 U.S.C. § 30118(a), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act").

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. New Hampshire Motor Speedway ("NHMS") is a corporation incorporated in the State of New Hampshire.

2. During the relevant period, Jerry Gappens was an Executive Vice President and General Manager at NHMS.

3. Marilinda Garcia for Congress ("Committee") is the authorized committee of Marilinda Garcia, a candidate for election in the Second Congressional District in New Hampshire in 2014.

4. The Act defines "contribution" to include "any gift, subscription, loan, advance, deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). "Anything of value" includes all in-kind contributions and, generally, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.52(d)(1).

5. The Act and Commission regulations prohibit corporations from making contributions to a federal political committee (other than independent expenditure-only political committees) and further prohibit any officer or director of any corporation from consenting to any such contribution by the corporation. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

6. The Committee held a "Race for Congress" fundraising event at NHMS on June 28, 2014, and the Committee's expenses included use of the venue, live music, food, and race car tickets. Jerry Gappens agreed to donate the costs of the event. On its 2014 July Quarterly Report, the Committee disclosed in-kind contributions from Jerry Gappens and Lucy Gappens, the spouse of Jerry Gappens, for the expenses associated with the Committee event.

7. NHMS, a corporation, and not the Gappens, paid certain event costs.

8. Jerry Gappens, an officer of NHMS, consented to the making of a corporate contribution, which is prohibited by 52 U.S.C. § 30118(a).

9. On October 27, 2016, NHMS submitted an invoice to the Committee for payment of \$4,485 representing certain costs of the Committee's event at NHMS on June 28, 2014.

V. Jerry Gappens consented to a corporate contribution in violation of 52 U.S.C. § 30118(a).

VI. 1. Respondent will pay a civil penalty to the Commission in the amount of One Thousand Two Hundred Dollars (\$1,200), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from committing violations of 52 U.S.C. § 30118(a).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

FOR THE COMMISSION:

Kathleen Guith
Kathleen Guith
Associate General Counsel
for Enforcement

10/7/17
Date


Jerry Gappens
Respondent

Date 9/21/17

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Jerry Gappens
6 Speedway Motorsports, Inc.
7 Lucy Gappens
8

MUR 6857

9 **I. INTRODUCTION**

10 The Complainants¹ allege that New Hampshire Motor Speedway, Inc. ("NHMS"), or its
11 parent company, Speedway Motorsports, Inc. ("SMI"), paid for a campaign event for Marilinda
12 Garcia for Congress ("Committee") that was held at NHMS in June 2014, and thus made a
13 corporate contribution in violation of the Federal Election Campaign Act of 1971, as amended
14 (the "Act").

15 Respondents acknowledge that NHMS paid for the Committee event. Accordingly, as
16 discussed below, the Commission found that Jerry Gappens, an officer of NHMS, impermissibly
17 consented to the making of NHMS's corporate contribution in violation of 52 U.S.C. § 30118(a).
18 Additionally, the Commission found that there is no reason to believe that SMI violated
19 52 U.S.C. § 30118(a). Finally, the Commission found that there is no reason to believe that Lucy
20 Gappens violated the Act.

21 **II. FACTUAL AND LEGAL ANALYSIS**

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23 **A. Factual Background**
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25 Marilinda Garcia was a candidate for election in the Second Congressional District of
26 New Hampshire in 2014. The Complainants state that the Committee held a "Race for
27 Congress" fundraiser event at NHMS ("the event"), and the expenses related to the event
28 included rental of the venue, live music, food, a raffle prize of two "VIP Access" tickets to an

¹ There were two nearly identical complaints filed against the Respondents. For purpose of convenience, the Commission considered the complaints together.

1 upcoming NASCAR race, and, for "Gold Member" ticket holders, pace car rides around the
2 speedway.² The Complainants allege that the Committee did not report any receipts or
3 disbursements related to this event on its disclosure reports, other than in-kind contributions from
4 Jerry Gappens and his wife, Lucy Gappens, for \$2,600 and \$2,320, respectively.³ The
5 Complaints identify Jerry Gappens as Executive Vice President and General Manager of SMI,
6 the parent company of NHMS.⁴ Further, the Complaints maintain that Jerry Gappens does not
7 own NHMS, and SMI cannot legally make a contribution to a federal candidate.⁵ Thus, the
8 Complaints, reasonably construed, allege that SMI, NHMS's corporate parent, and not the
9 Gappens, made the in-kind contributions, and such corporate contributions are prohibited under
10 the Act.

11 SMI, Jerry Gappens and Lucy Gappens ("Joint Respondents") responded jointly to the
12 Complaints asserting that SMI is a corporation, its principal place of business is in Charlotte,
13 North Carolina, it owns NHMS and other race tracks, and it was unaware of the event until it
14 received the Brown Complaint.⁶ The Joint Respondents contend that SMI did not intend to
15 contribute food and race tickets to the Committee, NHMS did not sponsor the event, and there
16 was a misunderstanding between Jerry Gappens, NHMS's Executive Vice President and General

² Judy Brown Compl. at 1 and Ex. 1; Lawson Brouse Compl. at 1 and Ex. 1. The tickets were \$100 for "Gold Members," \$35 for "Blue Members" and \$15 for "kids." See Ex. 1 of both Complaints.

³ Brown Compl. at 1 and Brouse Compl. at 1. The Committee's original 2014 July Quarterly Report discloses that the contributions from the Gappens were "in-kind." See 2014 July Quarterly Report at 16-17 (July 15, 2014). The Committee's Amended 2014 July Quarterly Report discloses that these contributions were for "event tickets, food and beverages." See Amended 2014 July Quarterly Report at 17 (Sept. 17, 2014).

⁴ Brown Compl. at 1 and Brouse Compl. at 1.

⁵ *Id.*

⁶ Joint Resp. to Brown Compl. at 1 and Joint Resp. to Brouse Compl. at 1. NHMS is incorporated in the State of New Hampshire.

1 Manager, and the Committee as to who was responsible for the food and race tickets.⁷ The Joint
2 Respondents explain that NHMS did not send an invoice to the Committee, as promised, and
3 Gappens left his position with NHMS in September 2015.⁸ The Joint Respondents assert that on
4 October 27, 2016, NHMS delivered an invoice for \$4,485 to the Committee for certain event
5 costs.⁹ The Joint Respondents maintain that Lucy Gappens did not provide an in-kind
6 contribution to the Committee, did not attend the event, and was not aware of it.¹⁰

7 Information available to the Commission indicates that Jerry Gappens set up the event at
8 NHMS, and he agreed to donate certain event costs. There is also information available that
9 NHMS sent an email to the Committee stating that all donations were compliments of Jerry
10 Gappens, and "compliments of Jerry Gappens" was printed on the tickets given to campaign
11 supporters.

12 **B. Legal Analysis**

13
14 The Act defines "contribution" to include "any gift, subscription, loan, advance, or
15 deposit of money or anything of value made by any person for the purpose of influencing any
16 election for Federal office."¹¹ "Anything of value" includes all in-kind contributions and, unless
17 otherwise exempted, the provision of any goods or services without charge or at a charge that is
18 less than the usual and normal charge for such goods or services.¹²
19

⁷ Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

⁸ Joint Resp. to Brouse Compl. at 2.

⁹ *Id.* and attached invoice.

¹⁰ Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

¹¹ 52 U.S.C. § 30101(8)(A)(i).

¹² 11 C.F.R. § 100.52(d)(1).

1 The Act and Commission regulations prohibit corporations from making contributions to
2 a federal political committee (other than independent expenditure-only political committees)¹³
3 and further prohibit any officer or director of any corporation from consenting to any such
4 contribution by the corporation.¹⁴

5 The available information indicates that NHMS, not Jerry and Lucy Gappens, made an
6 in-kind contribution to the Committee of certain event costs because NHMS's corporate
7 resources were used for this campaign event.

8 Based upon available information, it appears that Jerry Gappens, an Executive Vice
9 President and General Manager of NHMS,¹⁵ was instrumental in NHMS's contribution because
10 he agreed to donate certain event costs. It appears, then, that as an officer of NHMS, Jerry
11 Gappens consented to NHMS's contribution to the Committee. Thus, the Commission found
12 that there is reason to believe that Jerry Gappens violated 52 U.S.C. § 30118(a) by consenting to
13 a corporate contribution.

14 SMI is the parent company of NHMS, and the Joint Responses assert that prior to the
15 Complaints, SMI was unaware of the event, and the available information does not suggest that
16 SMI was involved in the event. Therefore, the Commission found that there is no reason to
17 believe that SMI violated 52 U.S.C. § 30118(a).

18 Finally, the Commission found that there is no reason to believe that Lucy Gappens
19 violated the Act in this matter because the available information does not indicate she had any
20 involvement here. It seems likely that \$2,320 of the total contribution was wrongly attributed to

¹³ See Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)).

¹⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

¹⁵ NHMS's 2014 Annual Report filed with the New Hampshire Secretary of State's Office lists Jerry Gappens as an officer. 2014 Annual Report (Mar. 10, 2014) at <https://www.sos.nh.gov/imaging/14905448.pdf>.

- 1 her merely because she is married to Jerry Gappens, who was subject to the contribution limit of
- 2 \$2,600.

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